

HENNEPIN COUNTY

MINNESOTA

September 18, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch,

Hennepin County, Minnesota writes to express its concerns about the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. Hennepin County, as of the 2010 census, has a population of 1,152,425 and is the most populous county in Minnesota. More than one in five Minnesotans live in Hennepin County. Hennepin County manages over 1100 miles of right-of-way and thousands of structures within its right-of-way.

In 1997, the Minnesota Legislature enacted legislation, Minnesota Statutes §237.162 and §237.163, authorizing Hennepin County to enact an Ordinance to allow Hennepin County the ability to manage the right-of-way under its jurisdiction. Pursuant to the statute, Hennepin County enacted Ordinance 22. In 2017, the Minnesota Legislature enacted additional provisions to the statute allowing a telecommunications right-of-way user the ability to obtain a permit(s) to place new wireless support structures or collocate small wireless facilities in the public right of way of a local government unit. Hennepin County, to facilitate the change in the statute, amended its Ordinance 22. Hennepin County's Ordinance 22 provides the necessary protections for the health and safety of its residents and the environment and does not in any way materially inhibit the growth of cutting-edge broadband services.

While we appreciate the Commission's efforts to engage with local governments on this issue and share the Commission's goal of ensuring the growth of cutting-edge broadband services for all Americans, we remain deeply concerned about several provisions of this proposal. Local governments have an important responsibility to protect the health, safety and welfare of residents, and we are concerned that these preemption measures compromise that traditional authority and expose wireless infrastructure providers to unnecessary liability.

- **The FCC's proposed new collocation shot clock category is too extreme.** The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired with the FCC's previous decision exempting small wireless facilities from federal historic and environmental review, this places an unreasonable burden on local governments to prevent historic preservation, environmental, or safety harms to the community. The addition of up to three cubic feet of antenna and 28 cubic feet of additional equipment to a structure not originally designed to carry that equipment is substantial and may necessitate more review than the FCC has allowed in its proposal.

Hennepin County requires a 90 day stop clock for the approval of a small wireless facility. Sixty (60) days is unrealistic considering the number of permits Hennepin County reviews monthly and would inhibit its ability to perform the necessary safeguards to ensure the health and safety of its residents and the environment.

- **The FCC's proposed definition of "effective prohibition" is overly broad.** The draft report and order proposes a definition of "effective prohibition" that invites challenges to long-standing local rights of way requirements unless they meet a subjective and unclear set of guidelines. While the Commission may have intended to preserve local review, this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding.
- **The FCC's proposed recurring fee structure is an unreasonable overreach that will harm local policy innovation.** We disagree with the FCC's interpretation of "fair and reasonable compensation" as meaning approximately \$270 per small cell site. Local governments share the federal government's goal of ensuring affordable broadband access for every American, regardless of their income level or address. That is why many cities have worked to negotiate fair deals with wireless providers, which may exceed that number or provide additional benefits to the community. Additionally, the Commission has moved away from rate regulation in recent years. Why does it see fit to so narrowly dictate the rates charged by municipalities?

Hennepin County has consistently worked with the telecommunication companies doing business in Hennepin County. Ordinance 22 is vetted with those companies and the companies input is welcome and considered before passing the Ordinance. As such, the permitting fees and maintenance fees have already been approved by the companies. Hennepin County is in the best position to determine the costs associated with permitting and maintenance of small wireless facilities on its structures and in its right-of-way. The FCC should not dictate those costs as long as the utilities within the local government has the ability to approve those costs.

Hennepin County has worked with private business to build the best broadband infrastructure possible for our residents. We oppose this effort to restrict local authority and stymie local innovation, while limiting the obligations providers have to our community. We urge you to oppose this declaratory ruling and report and order.

Respectfully submitted,



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Hennepin County Administrator
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